

TRANSCRIPT (NOTE: this is a rush transcript created from our recording)

Senator Ernest F. Hollings and Sen. John McCain

Subject: The proposed Next Wave Settlement

Thursday, December 6, 2001 – 2:30 PM

Senate Radio and Television Gallery

SEN. HOLLINGS: Very good. On NextWave – over the last 48 hours, I've been asked questions in one context – not necessarily reported accurately – I'm going to fight till the end. And the reason I would fight to the end -- listen to this opening statement of the Communications Act of 1934: "It is the purpose of this Act amongst other things to maintain the control of the United States over all the channels of radio transmission and to provide for the use of such channels but not the ownership thereof." And on and on and on. Now, that's fundamental communications law. There's no ownership, or subject to any bankruptcy law because it was a license.

That was as reported, and I'll read from the Second Circuit Court of Appeals. The licenses included the following language. This -- quote, "This authorization is conditioned upon the full and timely payment of all monies due pursuant to the terms of the Commission's installment plan as set forth in the Note and Security Agreement executed by the licensee. Failure to comply with this condition will result in the automatic cancellation of this authorization." That's automatic. I mean, there's no involvement about notice and whether it was regulatory and all these other things that try to raise it -- trying to make it subject to that law.

Now, when you understand that, you understand getting right to the bottom line. We're being asked to put in a bill in legislation to confirm the Circuit – the District Circuit Court bankruptcy finding. Why didn't the Federal Communications Commission ask us to put in a bill to confirm the Second Circuit Court finding? They have appealed it, on the premise that the bankruptcy court is inaccurate, it's wrong, it's unconstitutional. But having done that appeal and notification in June, later they got an extension until September and – from September until October – and right now, it's on appeal with an extension by the respondents to the notification of certiorari. So that's 'til January the 14th.

But here they've put a gun to our head. And I got this last Friday. The letter's dated just a week ago, by Richard Cheney as the president of the Senate. And incidentally, as the Chairman of the Committee, I got nothing. But this was – in fact, not the letter – but I got a rough copy of this, because I heard the rumor going around and looked, and last Friday got it. But this letter says here, which was delivered to the Senate by John Ashcroft, attorney general, reading from the second paragraph, "The enclosed bill would provide the statutory authorizations necessary to implement the settlement, which has also been agreed to by the Federal Communications Commission and various interested private parties."

It has not been agreed to by the Federal Communications Commission. I called over there and asked, "What in God's world's going on?" And they never have met.

Now you'll get an idea -- now you'll get an idea -- about what happens over there from this quote from the former Chairman -- I mean former Commissioner, Mr. Furchtgott-Roth. And I quote what he said just a couple of days ago, "The federal government meets behind closed doors with a group of hand-picked businesses over the course of several months to negotiate the transfer of several licenses from one company to a group of other companies, with a side payment of \$10 billion to the government for having brokered the deal." He says it stinks. What does Chairman Kennard say? I quote him. He said, on December the 3rd, "It is an outrage."

And of course, our friend Mr. Reed Hundt agrees with me twofold. One, if they were going to make any kind of agreement, they could have made a better financial agreement for the government. It's not the best, on the one hand. On the other hand, why put in a bill to confirm the bankruptcy court? Why not put in a bill to say, "Good, the Second Circuit is correct." If we can do that by law, let's do that by law, get our \$16 billion, and go ahead with the development of the licenses.

So this thing is an outrage. There are a lot of things to be said, but let me yield to my distinguished colleague Senator McCain.

SEN. McCAIN: Well, I want to thank Chairman Hollings for his involvement in this effort and his assertion of his proper authority as chairman of the oversight committee -- is his proper authority, as chairman of the Commerce, Science and Transportation Committee, to hold oversight hearings on this issue, which is simply what we are saying here today. We want this issue examined in the proper hearing process. We want the FCC to come forward. We want people to come forward and make their case, so the American people can know what's going to happen to billions of their tax dollars here.

The principal defects in this process are secrecy and timing. The settlement negotiations have been ongoing for months, as we all know. The 66-page NextWave settlement agreement and its associated enabling legislation, as the chairman just pointed out, were sent to the Congress about one week ago, on November 28th. Remarkably -- remarkably -- the terms of this settlement demand that Congress pass this week-old legislation and appropriate \$6 billion immediately, no later than December 31st. Remarkable. I haven't been around here as long as the chairman has, but I'll tell you, I've never seen anything even remotely to resemble what the Congress of the United States is being asked to do here.

Not only do the settling parties demand the Congress and the president enact their legislation according to their short schedule, they also demand that the Congress and the president enact it without any amendments or changes -- not even a comma. This process shows profound contempt for this legislature and the committee on which I am proud to serve under the chairmanship of Senator Hollings. Indeed some have stated, and they have stated publicly, "so as long as they hire enough lobbyists, the Senate and the House and the president will do exactly what they want exactly when they want it done." Worse yet, the settling parties expect that our countries legislatures will do their bidding without looking closely at the details. The settlement agreement that we've had for a week is a Byzantine complexity. The parties of the agreement

don't do research, negotiate, or draft it in a single week so they know full well that no legislature -- legislator or legislative staff will be able to grasp all of its twists and nuances in only a week.

In short, the settling parties not only expect this Congress to do what they want and when they want it, they also expect the Congress will act without knowing exactly what it's doing. The rushed and inadequate process of legislative review creates grave risks for the Congress and the public. We know that the NextWave settlement agreement asks the government to repeat past mistakes, but what else does it ask us to do? We do not and cannot know given the time constraints.

Let me give one example of the risk this poses for Congress and the public. One simple question: Who gets -- who gets the \$6 billion in spectrum ransom payments that Congress is being asked to pay for NextWave? Who gets it? So far as I can tell, no one in the government knows for sure. NextWave's history suggests that little or none of this money will be used to provide telecommunications services to the American public. And indeed, my understanding is that most of all these billions of dollars are expected to be divided up and paid out to NextWave's various investors, executives, and lobbyists.

Who are these investors, executives, and lobbyists, and how much do they stand to gain? In the last stimulus package that was passed by the House of Representatives, Enron would get \$253 million. Maybe they're investors in NextWave, for all we know.

I've asked the government to disclose all of its information on the ownership of NextWave. So far I have received no official response. If the Congress and the American people are being asked to divert to NextWave billions of dollars that could otherwise fund our war against terrorism, should we not at least be sure that terrorists or their supporters will not receive these public dollars? This may not be a problem, but we need to know.

The proper way to address this issue, I repeat, is through a series of hearings where all witnesses will come forward. The Commerce Committee will be able to decide and vote and pass out an authorization for this.

To put it on a Department of Defense appropriations bill is obscene and outrageous.

And I thank you, Mr. Chairman, for your steadfast advocacy not only for the American taxpayer but, frankly, for the jurisdiction of the committee, which I have been proud to serve under your leadership.

SEN. HOLLINGS: Well, I thank you. The fundamental is that the public, the people, own the spectrum, and the trustee of the people's spectrum is the Federal Communications Commission. There is no need for legislation. They ought not to be sending legislation; they ought to pursue the appeal. They say it's a 50-50 chance whether or not it will prevail or not before the Supreme Court. If it doesn't prevail, then we're going to have the court finding that there is an ownership in spectrum, and you can get it -- there was 66 plus 23 licenses, everything, so some of them could have been delivered, and then you can act like a sort of FCC yourself and parlay it around and the whole people spectrum will be rent asunder. We won't know how to control it, or

anything else like that. It's not ownership, it's automatically cancel. That's the fundamental involved.

They should pursue that appeal and not come up here with a gun to our heads. You just said I hadn't had a chance to get -- our committee asked to be briefed a couple of months ago. They heard that something was in the wind. And we asked of the White House and OMB and Justice Department, and FCC were forbidden to brief us. They would not brief us, and everything else. And last Friday is when I got this thing for the first time, and they put a gun to our heads and said, "by December the 31st."

I mean, the deal and the fix is on. Everybody is in on this thing except these two senators maybe and some others. Let them come forward, and let's air it publicly, not in a halfway fashion, but fully. Because we know now, from looking and knowing a little bit about communications law, that this is a fundamental interest and involvement of the federal government, and whether or not it's just a license, an authorization. And the analysis by the Second Circuit Court of Appeal is just right on target. But they went on some archaic provisions of ownership in the bankruptcy court, and it's not to be respected.

SEN. McCAIN: Let me --

SEN. HOLLINGS: Yes, sir?

SEN. McCAIN: Could I just mention one other point, very briefly? We have a letter from the Consumers Union, who needs to be heard as we go through this process. The Consumers Union will make available a copy of this letter.

Basically, I just will quote one sentence from their letter: "The proposed legislation is a raw deal for American taxpayers." I don't know if that's true or not, but the Consumers Union is a well-respected organization, and, in my view, deserves to be heard in this process.

SEN. HOLLINGS: Raw deal for communications law. Yes, sir?

QUESTION: Have you effectively killed this for this year?

SEN. HOLLINGS: I hope! I saw one little story that "Hollings said he wouldn't block it." I said I'd kill it! I hope I can kill it. I just said I'm not trying to delay anything. I don't mind having a public hearing. I'd love to have public hearings, but we got so much before the committee -- we got a CAFE hearing that I had early this morning, confirmation hearings that we got going on right now on our committee. We're trying to get through our week by next weekend -- our work by next weekend.

SEN. MCCAIN: And frankly, we don't have enough information yet to --

SEN. HOLLINGS: That's right. Oh, yeah, boy.

SEN. MCCAIN: -- convene -- (inaudible). We need a lot of information to prepare for a hearing. But we're -- I -- I believe that we are committed to holding hearings.

QUESTION: Have Daschle and Lott assured you, though, that if not on defense approps, this could go on the stimulus or --

SEN. HOLLINGS: Oh, boy! That's where I'm looking. Yeah, I've asked if an amendment came up on the defense appropriation, (I be ?) protected so I could have amendment that rather than confirming the bankruptcy court, let's have legislation confirming the Second Circuit Court of Appeals. And then we got 16 billion (dollars), and we got it to the rightful owners who won in the particular 16-billion-dollar bid and everything, and we can go on from there, if we're not going to pursue the appeal to the Supreme Court.

SEN. MCCAIN: I'd like -- just like to respond.

Yes, we are very concerned. We are very concerned -- especially of it being put in in a conference report in neither bill on either side and put in a conference report. Yes, I'm very concerned.

QUESTION: But isn't, under the -- I mean, this (deal ?) has been a bit of a mess. But under the circumstances, don't you think at the moment, this is -- that that's sort of the resolution that we're going to get?

SEN. MCCAIN: Absolutely not.

QUESTION: If it's delayed further, it --

SEN. HOLLINGS: A delay? Come on! This has been five years, and all of a sudden, we got to do it by December the 31st. (They're worried about the leak ?). That's -- that's ludicrous, that question.

Yes, sir?

QUESTION: But some of the companies that have had their bids frozen have said if this is protracted any longer, they may seek to recover those funds -- (inaudible) -- the market.

SEN. MCCAIN: We would never deny them the ability to seek redress in any way. And this last time I checked, the stock market's doing better.

SEN. HOLLINGS: Yes, sir?

QUESTION: Senator, yesterday you did say that you weren't going around lobbying anybody on this --

SEN. HOLLINGS: No, I'm not -- I got work to do. I can't run around lobbying everybody like they -- union -- they got 20 to 30 lobbyists. Literally, that's all I've been asked. My phone's rung off -- "What is your concern?" "How can we get together?" and everything else of that kind. And I can't make everyone understand that my concern is the fundamental communications law of licenses, just temporary authorization and the license under their particular bid said automatically canceled.

SEN. MCCAIN: I cannot remember when we've received more phone calls.

QUESTION: If I can actually ask the question: If you aren't going to be lobbying against it or, you know, talking with your fellow senators about it, can you explain how you plan to kill it?

SEN. HOLLINGS: Just keep watching, but I plan to get you all to kill it.

SEN. MCCAIN: No, no. We'll --

SEN. HOLLINGS: Yeah, yeah -- y'all -- y'all watch that stimulus bill and write -- I saw one good story about it that alarmed me in "Roll Call," and I'm trying to find who wrote those stories, because they probably got more updated information that I have.

I haven't had the chance to read --

SEN. MCCAIN: Could I say -- don't confuse, quote, "lobbying" and fighting. We intend to fight as hard as we can for our committee's jurisdiction and against this settlement, at least for a full and adequate ventilation of a \$16 billion issue here.

SEN. HOLLINGS: But the best way to fight is tell the truth to the free press and America and let them follow through. Yes, ma'am?

QUESTION: (Off mike.)

SEN. HOLLINGS: Not at all. It's never been used. So we -- turn on your TV tonight. Well, you're looking at CNN, ABC, NBC, CBS -- that's all free. There's been no auction. In fact, once those auctions started, I think it was Reed Hundt that said FCC stands for Federal Cash Cow. I mean, that's been wrong. I've been against the spectrum auctions, to tell you the truth. But in any event, let's fix in there -- who really owns the license owns the spectrum.

Yes, sir?

QUESTION: I was talking to one of the -- (inaudible) -- I think, today, and they said that they -- I asked them about your opposition and they said, "It's just one senator," and we --

SEN. HOLLINGS: That's true.

QUESTION: And I was just wondering what your chances -- what do you think your chances are --

SEN. HOLLINGS: I'm one senator -- and a junior senator, at that.

SEN. MCCAIN: We'll find out.

SEN. HOLLINGS: He celebrated his 99th birthday.

SEN. MCCAIN: We'll find out. We'll make them famous.

SEN. HOLLINGS: Yeah.

QUESTION: Could you talk a little bit more about -- you had talked about foreign ownership.

SEN. MCCAIN: I have no concerns about foreign ownership. I have concerns about knowing who's going to be paid. I also would be very interested in knowing how much is being paid to lobbyists and how many of them.

QUESTION: Have you formally asked for that?

SEN. MCCAIN: Oh, yeah. Sure. We've asked for it.

QUESTION: Who did you ask?

SEN. MCCAIN: The Federal Communications Commission. And we have received -- not received an answer.

SEN. HOLLINGS: Can you imagine a letter saying the Federal Communications Commission has approved it? They haven't approved it. I don't know that the Justice Department -- I guess, with the Attorney General's name on that letter, has. But the FCC hasn't looked into it and as a body approved it, and yet they're asking me in a couple of weeks, when they've been working for months and everything of that kind, with a gun at your head -- you either do it by December the 31st -- what was the reason for that?

SEN. MCCAIN: I think --

SEN. HOLLINGS: Why December the 31st? Why not 'til March the 1st, or something like that, to give us a chance for a hearing?

SEN. MCCAIN: I think that if you ask the chairman of the FCC, and I would urge you to call over there -- has said it deserves thorough examination on the part of the Congress. And clearly the Oversight Committee has that responsibility.

SEN. HOLLINGS: It deserves thorough examination by the Federal Communications Commission before the Attorney General of the United States writes us that it has been approved by the Federal Communications Commission.

QUESTION: Is there concern that since the D.C. -- (off mike) -- licenses, is the FCC limited at the Supreme Court and that's why it gets to keep them? And is there a return of government funds -- Next Wave's funds? In other words that -- because right now they're Next Wave's licenses.

SEN. HOLLINGS: No. Not right now. My position is right now they're the government's licenses. That's the fundamental.

SEN. MCCAIN: Okay. Let me just put it back in perspective. All of those questions, and many of them that are being answered here, could be answered in a hearing, the oversight hearing of this settlement. And not only would we get our questions answered, but you would get your questions answered as well.

Yes, sir.

QUESTION: Are you saying there's not going to be a hearing this year? Do you plan to hold a hearing?

SEN. HOLLINGS: No! I'm not going to hold a hearing next week. I got other work -- we got to get out of here.

SEN. MCCAIN: To be honest with you, I don't see how we could be prepared for a hearing by the end of next week. Now, if we're here the week after that, perhaps we should -- you know. But it depends on how much information we can gather. But it would be pointless when we don't even have the information of who would be paid off to have a hearing without adequate information to hold a hearing.

QUESTION: How much of this information is publicly available? There's the bankruptcy court filings, the details that are required that list all -- who their creditors are, who the shareholders are --

SEN. MCCAIN: No, it has organizations. It doesn't have individuals. You'll find that we do not have all the information as to who the investors are in any way.

Go ahead.

QUESTION: What would you say the odds are of NextWave legislation passing before you go home?

SEN. MCCAIN: I have no idea. I have no idea. I have no idea. All I know is that we are together in strong opposition to see that we have the adequate oversight that the taxpayers of America, the citizens of America deserve when their own asset is being disposed of.

QUESTION: Did you talk to Senator Byrd or to Senator Stevens simply about this, though? Did

they give you an assurance that --

SEN. HOLLINGS: I talked to Senator Stevens, and he gave me an assurance that NextWave would not be on the Defense bill.

QUESTION: And that's -- and there won't be any sort of new manager's amendment or anything, so it's not going on this bill?

SEN. HOLLINGS: I don't think it is. I think --

SEN. MCCAIN: One never knows.

SEN. HOLLINGS: -- Senator Stevens knows what he's talking about. But then they might say a House member sneaked it on. You fellows got to watch for us.

QUESTION: Senator McCain, you mentioned earlier about your concern about it going potentially to terrorists. Did I hear that right?

SEN. MCCAIN: No, I'm not worried about that. I'm worried about it going -- I'm worried about none of us knowing where this -- taxpayers' dollars go. That's exactly what I feel about it.

QUESTION: If it came down to a decision, then, between -- for members to vote for Defense appropriations who are sending this bill, I mean, how do you think the members are going to make that choice? If that's --

SEN. HOLLINGS: All they got to do is read it. It says here that -- paragraph three, "It is hereby authorized and appropriated \$9.55 billion."

QUESTION: But you didn't know what you were up against in the Senate --

SEN. HOLLINGS: I'm not up against anything.

QUESTION: Well, in terms of --

SEN. HOLLINGS: No, no. Don't you -- wait a minute. I've never heard since I've been here for 35 years "It is hereby appropriated \$9.55 billion" when it has not been approved by the Federal Communications Commission. And not asking us to approve it, and dump it, and say by December the 31st, I'm not going to react to that. There's not going to be any hearing until next year.

SEN. MCCAIN: Stand by, stay tuned, we're going to have a lot of fun in the next few days.

Thanks a lot.

SEN. HOLLINGS: Thank y'all.